

schedules, exhibits and appendices incorporated therein. All issues have been successfully negotiated and agreed upon. Therefore, no arbitration of any issue is required.

Applicant seeks the Commission's approval of the Agreement, consistent with the provisions of the Federal Act and OAC 165:55-17-1, *et seq.* SWBT believes that the implementation of this Agreement complies fully with § 252(e) of the Federal Act because the Agreement is consistent with the public interest, convenience and necessity and does not discriminate against any telecommunications carrier. The Agreement promotes diversity in providers, provides for interconnectivity between the parties' respective networks and will lead to increased customer choices for telecommunications services once Reconex's proposed tariffs are approved.

Applicant respectfully requests that the Commission grant expeditious approval of this Agreement, without change, suspension or other delay in its implementation. This is a bilateral agreement, reached as a result of negotiations and compromise between competitors, and SWBT believes that procedures for review of the Agreement should be designed to permit expeditious implementation thereof, and that interventions should be strictly limited consistent with the scope of review specified by the Federal Act and the Commission's applicable rules.

The applicable standard of review is set forth in § 252(e) of the Federal Act and has been substantively adopted by this Commission in OAC 165:55-17-7(e). Section 252(e) provides as follows:

(e) APPROVAL BY STATE COMMISSION

- (1) APPROVAL REQUIRED. -- Any interconnection agreement adopted by negotiation or arbitration shall be submitted for approval to the State commission. A State commission to which an agreement is submitted to shall approve or reject the agreement, with written findings as to any deficiencies.
- (2) GROUNDS FOR REJECTION. -- The State commission may only reject --
 - (A) an agreement (or any portion thereof) adopted by negotiation under subsection (a) if it finds that --
 - (I) the agreement (or portion thereof) discriminates against a telecommunications carrier not a party to the agreement; or
 - (ii) the implementation of such agreement or portion is not consistent with the public interest, convenience and necessity;

The affidavit of Robert E. Stafford, Division Manager-Regulatory and Industry Relations for SWBT, establishes that the Agreement submitted herein satisfies these standards. (Affidavit, Attachment I.)

III. Legal Authority

The Commission is vested with requisite authority pursuant to Article IX, § 18 of the Oklahoma Constitution, 17 O.S. § 131, *et seq.*, OAC 165:55, *et seq.*, and 47 U.S.C. § 252(e).

IV. Relief Sought

WHEREFORE, Applicant respectfully requests that the Commission approve the Resale Agreement between SWBT and Reconex, and such additional relief as the Commission deems proper and reasonable.

Respectfully submitted,



ROGER K. TOPPINS, OBA #15410
TRACY A. PARKS, OBA #14292
800 North Harvey, Room 310
Oklahoma City, OK 73102
Telephone: (405)291-6751/291-6483

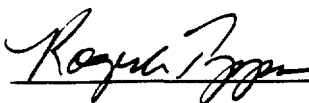
ATTORNEYS FOR SOUTHWESTERN BELL
TELEPHONE COMPANY

CERTIFICATE OF MAILING

On this 20th day of December, 1996, a true and correct copy of the foregoing was mailed, postage prepaid, to:

Maribeth Snapp, Deputy General Counsel
Oklahoma Corporation Commission
Jim Thorpe Building
Oklahoma City, OK 73105

Rick Chamberlain
Office of the Attorney General
112 State Capitol Building
Oklahoma City, OK 73105



BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

APPLICATION OF SOUTHWESTERN BELL)
 TELEPHONE COMPANY FOR APPROVAL OF)
 RESALE AGREEMENT WITH STERLING)
 INTERNATIONAL FUNDING D/B/A RECONEX)
 PURSUANT TO § 252(e) OF THE)
 TELECOMMUNICATIONS ACT OF 1996.) CAUSE NO. PUD 96

AFFIDAVIT OF ROBERT E. STAFFORD

STATE OF OKLAHOMA)
) ss:
 COUNTY OF OKLAHOMA)

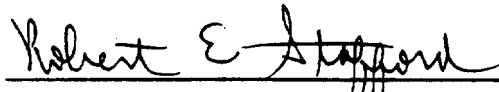
Before me, the undersigned Notary Public, on the 20th day of December, 1996, personally appeared Robert E. Stafford, Division Manager-Regulatory and Industry Relations of Southwestern Bell Telephone Company (SWBT) who, upon being duly sworn on oath, deposed and said the following:

1. My name is Robert E. Stafford. I am over the age of 21, of sound mind and competent to testify to the matters stated herein. I am the Division Manager-Regulatory and Industry Relations for SWBT, and I have knowledge concerning the Resale Agreement between Southwestern Bell Telephone Company and Sterling International Funding d/b/a Reconex (Reconex) on behalf of SWBT. I have personal knowledge of the provisions of the Agreement. The parties diligently negotiated under the Telecommunications Act of 1996, culminating in an executed agreement on December 2, 1996.
2. The Resale Agreement, together with its schedules, exhibits and appendices incorporated therein, are an integrated package and are the result of good faith arm's-length negotiation and compromise between competitors.
3. The implementation of this Resale Agreement is consistent with the public interest, convenience and necessity. Once Reconex has effective tariffs, the Resale Agreement will allow the exchange of traffic between SWBT and Reconex, furthering the transition of telecommunications competition in the State of Oklahoma, a policy which has been advocated by this Commission and the United States Congress. The Agreement allows diversity in providers,

provides for interconnectivity and increases customer choices for telecommunications services.

4. This Resale Agreement is pro-competitive in that it allows for Reconex to compete with SWBT as a provider of local exchange service. The Resale Agreement allows Reconex's customers to be able to make and receive local telephone calls to the same extent as they could in receiving local telephone service from SWBT, including the ability to have their names listed in the Southwestern Bell white pages, access to 911 with no disparity in dialing, and an ability to place and receive alternatively billed calls.
5. Implementation of the Resale Agreement will provide end users with additional choice for local telephone service subject to the same service quality standards and service capabilities as those required by the Commission's rules and which end users have traditionally come to expect from their local service provider.
6. This Resale Agreement does not discriminate against any telecommunications carriers. The Agreement is available to any similarly situated telecommunications service provider in negotiating a similar agreement.
7. The Resale Agreement provides Reconex access and interconnection to SWBT network facilities for the provision of telecommunications services to both residential and business customers.

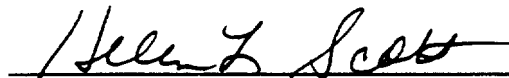
Further affiant sayeth not.



ROBERT E. STAFFORD

Division Manager-Regulatory & Industry Relations

Subscribed and sworn to before me this 20th day of December, 1996.



NOTARY PUBLIC

My Commission Expires:

8/28/00

**RESALE AGREEMENT BETWEEN
SOUTHWESTERN BELL TELEPHONE COMPANY
AND STERLING INTERNATIONAL FUNDING d/b/a RECONEX**

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**RESALE AGREEMENT BETWEEN
SOUTHWESTERN BELL TELEPHONE COMPANY
AND LSP**

This Agreement is between Southwestern Bell Telephone Company ("SWBT"), a Missouri corporation, and Sterling International Funding d/b/a Reconex ("LSP") (collectively, "the Parties") entered into this 2nd day of December, 1996.

WHEREAS, pursuant to the Telecommunications Act of 1996 (the "Act"), the Parties wish to establish terms for the purchase by LSP of certain SWBT retail telecommunications services and certain other services for resale by LSP to its local exchange end users in the State of Oklahoma. Therefore, the Parties hereby agree as follows:

I. DESCRIPTION AND CHARGES FOR SERVICES

The services available to LSP for resale and the discounts for such services are identified in Attachments A and B. Furthermore, to the extent that a federal or state regulatory agency adopts a final order establishing wholesale discounts under 252(d)(1) of the Telecommunications Act, which is not stayed and which directs SWBT to apply state-specific wholesale discount percentages which are different from those incorporated within this Agreement, either Party shall have the option of converting to that discount level upon ten (10) days' written notice to the other Party.

SWBT shall allow LSP to resell Customer Initiated Suspension and Restoral Service as outlined in the corresponding retail tariff. Should LSP choose to suspend an end user through Company Initiated Suspension Service, this suspension period shall not exceed 14 calendar days. Within that time period, restoral of service shall be at the rate outlined in the corresponding tariff. On the 15th day, SWBT shall disconnect service, unless service has been restored during the 14-day period.

II. TERMS AND CONDITIONS FOR RESALE OF SERVICES

The following terms and conditions are applicable to all services purchased under this Agreement.

A. Permitted Use of Resold Services by LSP and Its End Users

1. For services included in this Agreement, which are offered through tariffs by SWBT to its end users, the rules and regulations associated with the applicable State General Exchange Tariff, Local Exchange Service Tariff, and the other tariffs for the resold service (such tariffs collectively referred to herein as "corresponding tariffs"), apply except as otherwise provided herein.

2. LSP shall only sell Plexar services to a single end user or multiple end users on continuous properties.
3. Except where otherwise explicitly provided in the corresponding tariffs, LSP shall not permit the sharing of a service or services by multiple end users or the aggregation of traffic from multiple end users onto a single service.
4. LSP shall only resell services purchased under this Agreement to the same class of end users to whom SWBT sells such services (e.g. residence service shall not be resold to business end users).
5. SWBT promotions of 90 days or less shall not be available to LSP for resale.
6. LSP shall not use a resold service to avoid the rates, terms and conditions of SWBT's corresponding tariffs.
7. LSP shall not use resold local exchange telephone service to provide access services to itself, interexchange carriers (IXCs), wireless carriers, competitive access providers (CAPs), or other telecommunications providers. Provided however, that LSP may permit its end users to use resold local exchange telephone service to access IXCs, wireless carriers, CAPs, or other retail telecommunications providers.
8. If LSP is in violation of a provision of Article II. A. of this Agreement, SWBT shall notify LSP of the violation in writing of the specific provision being violated. At such time, LSP shall have thirty (30) days to correct the violation and notify SWBT in writing that the violation has been corrected. SWBT shall then bill LSP for the charges which should have been collected by SWBT or the actual revenues collected by LSP from its end users for the stated violation, whichever is greater. If LSP disputes the violation, it shall notify SWBT in writing within fourteen (14) days of receipt of notice from SWBT. Disputes shall be resolved as outlined in Section XVIII of the Agreement.
9. An End User Common Line (EUCL) charge will continue to apply for each local exchange line resold under this Agreement. All federal rules and regulations associated with EUCL charges, as found in Tariff FCC 73, also apply.

B. Use of SWBT Trademarks

LSP shall not, without SWBT's written authorization, offer the services covered by this Agreement using the trademarks, service marks, trade

names, brand names, logos, insignia, symbols or decorative designs of SWBT or its affiliates. Nor shall LSP state or imply that there is any joint business association or similar arrangement with SWBT in the provision of telecommunications services to LSP's own end users. LSP may brand services included in this Agreement with its own brand name, but SWBT shall not be responsible for providing such branding.

C. Network and Service Order Conditions

1. SWBT's obligation to provide the services available for resale under this Agreement is subject to the availability of existing network facilities.
2. When LSP converts an end user currently receiving noncomplex service from the SWBT network, without any changes to SWBT's network, LSP will be charged a per-order conversion charge of \$16.65 in Texas and \$25.00 in the four northern states. When LSP converts an end user with noncomplex service and adds or changes are made to the network, the respective \$16.65 or \$25.00 conversion charge will apply, as well as any normal service order charges associated with said changes. All nonrecurring service connection charges, excluding the conversion charge mentioned above, will be charged at a discount for those services listed in Attachments A and B. Complex orders will be charged at a higher rate.
3. For the purposes of ordering service under this Agreement, all requests for service shall be handled as an initial request for service under one service order. The additional line rate for Service Order Charges shall apply only to those requests for additional residential service at the end user's same location where a residential line is currently provided on SWBT's network, regardless of the nonfacilities based local service provider of record.

III. ADDITIONAL SERVICES

A. 911/E911

1. Access to the 911 or E911 service, available to SWBT end users in the area(s) served by LSP, shall be made available to LSP's end users.
2. LSP shall be responsible for collecting and remitting all applicable 911 surcharges on a per line basis to the Public Safety Answering Point (PSAP).
3. When requested by SWBT, LSP shall timely provide accurate and complete information on each of LSP's end users as needed for the

provisioning of 911 service to LSP's end users. Such information shall be in a format determined by SWBT.

B. Dialing Parity

1. Local Dialing Parity

SWBT agrees that local dialing parity shall be available to LSP. That is, end users of SWBT and end users of LSP shall have the same exchange boundaries, such end users shall be able to dial the same number of digits when making a "local" call.

2. IntraLATA Toll Dialing Parity.

SWBT agrees to make intraLATA toll dialing parity available in accordance with Section 251(b)(3) of the Telecommunications Act of 1996.

C. White Page Directories: Listings, Distribution and Information Page

1. At LSP's request, SWBT shall provide nondiscriminatory access to White Pages directory listing and distribution services under the terms and conditions described herein:
 - a) SWBT shall provide, at no additional charge, a straight line listing in the appropriate SWBT white pages for each of LSP's local exchange service end users. Subscriber listing information shall, however, remain the property of SWBT.
 - b) Enhanced Listing Services (e.g., signature listings) can be purchased by LSP for its end users on a per listing basis. LSP shall pay SWBT for all such listings provided to LSP's end users. The discounts applicable to Listing Services are contained in Attachments A and B to this Agreement.
 - c) LSP end users shall be entitled to one directory per basic residential or business line provided by SWBT pursuant to this Agreement.

SWBT, or its agents shall deliver a White Pages Directory to LSP end user's premises at the same time that such directories are delivered to SWBT end users. If an LSP's end user already has a current SWBT directory, SWBT shall not be required to deliver a new directory to that end user until the new directories are published for that end user's location.

2. Information Page

- a) At LSP's request, SWBT shall include in the "Informational Page" section of SWBT's White Pages directory, for those geographical areas in which LSP provides local exchange services, LSP's customer contact information regarding emergency services, billing and service information, repair services and other pertinent information similar to that provided by SWBT in its "Informational Pages." Such information shall be included on the same page with other LSP information.
- b) At LSP's option, LSP shall be provided a single "Informational Page" (one side of one page) in the informational section of the White Pages directory covering a geographic area where an LSP provides local exchange service. This page shall be no different in style, size, color and format than SWBT "Informational Pages." Sixty (60) days prior to the directory close date, LSP shall provide to SWBT the "Informational Page" in the form of camera-ready copy. The charges associated with this service vary from geographic market to market, and are charged outside this Agreement.

D. Directory Assistance (DA)

- 1. SWBT shall provide access to DA to LSP's end users. LSP shall pay the charges associated with the use of such services by LSP's end users. The discounts applicable to such services are contained in Attachments A and B, which is attached hereto and made a part hereof.

2. Liability

- a) LSP hereby releases SWBT from any and all liability for damages due to errors or omissions in LSP's subscriber listing information as it appears in the White Pages directory, including, but not limited to, special, indirect, consequential, punitive or incidental damages. To the extent LSP reimburses its end user subscriber any listing charge due to errors or omissions caused directly by SWBT, SWBT shall reimburse LSP any associated wholesale rate.
- b) LSP shall indemnify, protect, save harmless and defend SWBT (or SWBT's officers, employees, agents, assigns and representatives) from and against any and all losses, liability, damages and expense arising out of any demand, claim, suit

or judgment by a third party in any way related to any error or omission in LSP's subscriber listing information as it appears in the White Pages directory, including any error or omission related to nonpublished or nonlisted subscriber listing information. LSP shall so indemnify regardless of whether the demand, claim or suit by the third party is brought jointly against LSP and SWBT, and/or against SWBT alone. However, if such demand, claim or suit specifically alleges that an error or omission appears in LSP's subscriber listing information in the White Pages directory, SWBT may, at its option, assume and undertake its own defense, or assist in the defense of the LSP, in which event the LSP shall reimburse SWBT for reasonable attorney's fees and other expenses incurred by SWBT in handling and defending such demand, claim and/or suit.

E. Operator Services (OS)

1. SWBT shall provide access to Operator Services to LSP's end users. LSP shall pay the charges associated with the use of such services by LSP's end users. The discounts applicable to such services are contained in Attachments A and B, which is attached hereto and incorporated by reference.
2. SWBT shall provide Line Status Verification and Busy Line Interrupt on calls made on SWBT's network to LSP end users. LSP shall pay SWBT associated charges when its end users request such services, with discounts to apply as listed in Attachments A and B.

IV. RESPONSIBILITIES OF SWBT

- A. SWBT shall allow LSP to place service orders and receive phone number assignments (for new lines). These activities shall be accomplished by telephone call or facsimile until electronic interface capability has been established. SWBT, with input from LSP, shall provide interface specifications for electronic access for these functions to LSP once such electronic interfaces become technically feasible and are in place. However, LSP shall be responsible for modifying and connecting any of its systems with SWBT provided interfaces when such interfaces become available.
- B. SWBT shall implement LSP service orders within the same time intervals SWBT uses to implement service orders for similar services for its own end users. LSP, on behalf of its end users, shall be entitled to a service guarantee under the same terms and conditions as contained in SWBT's corresponding tariff under Service Guarantee.

- C. LSP will have the ability to report trouble for its end users to appropriate SWBT trouble reporting centers 24 hours a day, 7 days a week. LSP will be assigned a customer contact center when initial service agreements are made. LSP end users calling SWBT may be referred to LSP at the number provided by LSP.

Methods and procedures for ordering and trouble reporting are outlined in the Handbook for Non-Switched Based Providers dated 11/15/95, as amended by SWBT from time to time. Both parties agree to abide by the procedures contained therein.

- D. SWBT will provide LSP with the detailed billing information in a standard electronic format necessary for LSP to issue a bill to its end users. LSP shall have the option of receiving daily usage to monitor the patterns of its end users' usage sensitive services as outlined in Article IX.D.

V. ADDITIONAL RESPONSIBILITIES OF THE PARTIES

Cooperation on Fraud

SWBT shall not be liable to LSP for any fraudulent usage on LSP's end users' accounts.

The Parties agree to cooperate with one another to investigate, minimize and take corrective action in cases of fraud. The Parties' fraud minimization procedures are to be cost effective and implemented so as not to unduly burden or harm one Party as compared to the other.

At a minimum, such cooperation shall include providing to the other Party, upon request, information concerning end users who terminate services to that Party without paying all outstanding charges, when such end user seeks service from the other Party. The Party seeking such information is responsible for securing the end user's permission to obtain such information.

VI. CHANGES IN SUBSCRIBER CARRIER SELECTIONS

- A. Prior to submitting an order under this Agreement, LSP shall obtain written documentation from the end user confirming the end user's request or such documentation as may be required by applicable State laws and regulations. LSP shall make authorization available to SWBT upon request. Similarly, prior to switching an end user's service from LSP to itself, SWBT shall obtain documentation from the end user confirming the end user's request in such documentation as outlined above.
- B. If an end user notifies SWBT or LSP that its local service provider of record has been changed without authorization (slammed), and wishes to be served by the other Party, the Party receiving such request shall be free

to immediately provide service to such end user. Additionally, SWBT shall be free to connect the end user to any LSP based upon the LSP's request.

- C. Neither Party shall be obligated by this Agreement to investigate any allegations of slamming on behalf of the other Party or a third party. If SWBT agrees to investigate an alleged incidence of slamming on behalf of LSP, SWBT shall charge LSP a \$50 investigation fee.
- D. When SWBT receives an order from LSP for services under this Agreement and SWBT is currently providing the same services to another local service provider for the same end user, SWBT shall notify the end user's local service provider of record of such order coincident with processing the order. It shall then be the responsibility of the local service provider of record and LSP to resolve any issues related to the end user. This paragraph shall not apply to new additional lines and services purchased by an end user from multiple LSPs or from SWBT.
- E. The LSP agrees to hold harmless and indemnify SWBT against any and all liability and claims, including reasonable attorney's fees, that may result from SWBT acting under this Article.
- F. Nothing herein shall be interpreted to apply to conversion of LSP end users pursuant to Article XII. (Termination of Service to LSP).

VII.

ADDITIONAL RESPONSIBILITIES OF LSP

A. Payment of Rates and Charges

1. LSP is solely responsible for the payment of charges for all services furnished under this Agreement including, but not limited to, calls originated or accepted at LSP's location and its end users' service locations, with the exception of any retail services provided directly by SWBT to the end user which SWBT shall be responsible for billing.

Interexchange carried traffic (e.g., sent-paid, information services and alternate operator services messages) received by SWBT for billing to resold end-user accounts will be returned as unbillable and will not be passed on to LSP for billing. An unbillable code returned with those messages to the carrier will indicate that the messages originated from a resold account and will not be billed by SWBT.

2. SWBT shall not be responsible for the manner in which the use of resold service, or the associated charges are allocated to others by LSP. All applicable rates and charges for such services will be billed to and shall be the responsibility of LSP, with the exception of retail

services provided directly to the end user by SWBT as described in paragraph 1 above.

3. Compensation for all services shall be paid by LSP regardless of LSP's ability or inability to collect charges from its end user for such service.
4. If LSP does not wish to be responsible for collect, third number billed, toll, 900 and 976 calls, it must order the appropriate blocking for resold lines under this Agreement and pay any applicable charges. If appropriate blocking is in place, any exchange carrier originated charges resulting in errors that are billed by SWBT to LSP will be credited to the LSP. LSP acknowledges that blocking is not available for certain types of calls, including 800 numbers, 950 Feature Group B and all 911 calls.

B. Interfaces with SWBT

LSP shall be responsible for modifying and connecting any of its systems with SWBT-provided interfaces as described in this Agreement.

C. Repair Contact Arrangements

LSP shall be responsible for providing to its end users and to SWBT a telephone number or numbers that LSP's end users can use to contact LSP in the event of service or repair requests. In the event that LSP's end users contact SWBT with regard to such requests, SWBT shall inform the end user that they should call LSP and may provide LSP contact number.

D. LSP Operating Company Number (OCN)

For the purposes of establishing service and providing efficient and consolidated billing to the LSP, the LSP is required to provide SWBT its authorized and nationally recognized OCN.

E. Special Service Arrangements

For special service arrangements for LSP not covered under this Agreement, special charges shall apply as provided in the applicable corresponding tariffs.

F. Special Construction

If the LSP's request for service or changes in any service provided pursuant to this Agreement, requires construction of special facilities or modifications to existing facilities, special construction charges shall apply

as provided in the corresponding tariff.

VIII. NONEXCLUSIVITY

This Agreement is nonexclusive. LSP acknowledges that SWBT will be providing the same or similar services to other local services providers in accordance with negotiated agreements which will be filed with the appropriate state commission(s). LSP also acknowledges that SWBT may, upon end user request, provide any and all of the services provided to LSP under this Agreement directly to the end users. SWBT acknowledges that LSP may obtain the same or similar services from other local exchange companies.

IX. SUPPORT SYSTEMS SERVICES

A. Support Systems Services

1. Transfer of Service Announcements (Intercept)

The Party formerly providing service to an end user shall provide a Basic Referral announcement, reciprocally and free of charge on the abandoned telephone number. The announcement states that the called number has been disconnected or changed and provides the end user's new telephone number to the extent that it is listed.

Basic Intercept Referral Announcements are to be provided on residential numbers for a minimum of thirty (30) days where facilities exist and the threat of telephone number exhaustion is not imminent.

Basic Intercept Referral Announcements for a single line business end users and the primary listed telephone number for Direct Inward Dial (DID) and "Centrex-type" end users, shall be available for a minimum of thirty (30) days or the life of the white pages directory, whichever is greater. If the threat of telephone number exhaustion becomes imminent for a particular central office, the service provider may reissue a disconnected number prior to the expiration of the directory, but no earlier than thirty (30) days after the disconnection of the business telephone number.

2. Coordinated Repair Calls

SWBT shall be responsible for repairing its own network. However, LSP shall maintain telephone numbers where its end user may call to report instances of trouble.

The Parties shall employ the following procedures for handling misdirected repair calls:

- a. The Parties shall inform their respective end users of the correct telephone numbers to call to access their respective repair bureaus.
- b. To the extent the correct provider can be determined, each Party shall refer misdirected repair calls to the proper provider of local exchange service, at no charge, and shall provide the end user the contact telephone number provided by the other party.

In responding to repair calls, neither Party shall make disparaging remarks about each other, nor shall they use these repair calls as the basis for internal referrals or to solicit customers or to market services. Either Party may respond with accurate information in answering customer questions.

- c. The Parties shall provide each other their respective repair contact numbers.

B. Network Management Controls

Each Party shall provide a 24-hour contact number for Network Traffic Management issues to the other. A FAX number must also be provided to facilitate event notifications for planned mass calling events. Additionally, both Parties agree that they shall work cooperatively that all such events shall attempt to be conducted in such a manner as to avoid degradation or loss of service to other end users.

C. Law Enforcement and Civil Process

SWBT and LSP shall handle law enforcement requests as follows:

- 1) **INTERCEPT DEVICES** Local and federal law enforcement agencies periodically request information or assistance from local telephone service providers. When either Party receives a request associated with an end user of the other Party, it shall refer such request to the appropriate Party, unless the request directs the receiving Party to attach a pen register, trap and trace or form of intercept on that Party's own facilities, in which case that Party shall comply with any valid request.
- 2) **SUBPOENAS** If a Party receives a subpoena for information concerning an end user the Party knows to be an end user of the other Party, it shall refer the subpoena to the requesting entity with an indication that the other Party is the responsible company. Provided, however, if the subpoena requests records for a period of

time during which the receiving Party was the end user's service provider, the receiving Party will respond to any valid request.

- 3) **EMERGENCIES** If a Party receives a request from a law enforcement agency for a temporary number change, temporary disconnect or one way denial of outbound calls for an end user of the other party, the receiving Party will comply so long as it is a valid emergency request. In the case of the LSP, the LSP shall refer such request to SWBT and SWBT shall honor such request in accordance with this paragraph. However, neither Party shall be held liable for any claims or damages arising from compliance with such requests, and the Party serving the end user agrees to indemnify and hold the other Party harmless against any and all such claims.

D. Usage Data

No sooner than January 1, 1997 and on no less than 45 days' advance notice, LSP may request SWBT to make certain usage information available to LSP on a daily basis via a mechanized feed. The information will consist of usage sensitive charges SWBT will bill to LSP arising out of the use of resold lines. LSP agrees to pay SWBT \$.003 per message for this service.

X. CALL TRACE

LSP end user's activation of Call Trace shall be handled by the SWBT Call Trace Center (CTC) or its Annoying and Anonymous Call Bureau. SWBT shall notify LSP of requests by its end users to provide the call records to the proper authorities. Subsequent communication and resolution of the case with LSP's end user (whether that end user is the victim or the suspect) will be coordinated through the LSP.

LSP understands that for services where reports are provided to law enforcement agencies (e.g., Call Trace) only billing number and address information shall be provided. It shall be the LSP's responsibility to provide additional information necessary for any police investigation. LSP shall indemnify SWBT against any claims that insufficient information led to inadequate prosecution.

XI. TAXES

LSP shall be responsible for all federal, state or local, sales, use, excise or gross receipts taxes or fees imposed on or with respect to the services provided under this Agreement including those taxes and fees imposed on SWBT. LSP shall reimburse SWBT for the amount of any such taxes or fees which SWBT is required to pay or collect for services provided to LSP hereunder.

XII.

TERMINATION OF SERVICE TO LSP

- A. If LSP fails to pay when due, any and all charges billed to them under this Agreement, including any late payment charges (Unpaid Charges), and any portion of such charges remain unpaid more than fifteen (15) days after the due date of such Unpaid Charges, SWBT shall notify LSP in writing that in order to avoid having service disconnected, LSP must remit all Unpaid Charges to SWBT within fourteen (14) business days.
- B. If LSP disputes the billed charges, it shall, within the fourteen (14) day period provided for above, inform SWBT in writing which portion of the charges it disputes, including the specific details and reasons for its dispute; immediately pay to SWBT all undisputed charges; and pay all disputed charges into an interest bearing escrow account with a third party escrow agent mutually agreed upon by the Parties.
- C. Disputes hereunder shall be resolved in accordance with the procedures identified in Article XVIII (Dispute Resolution). Failure of LSP to pay charges deemed owed to SWBT after conclusion of the Arbitration shall be grounds for termination under this Article.
- D. If any LSP charges remain unpaid or undisputed twenty-nine (29) days past the due date, SWBT shall notify LSP, the Commission and the end user's IXC(s) of Record in writing, that unless all charges are paid within sixteen (16) days, LSP's service shall be disconnected and its end users shall be switched to SWBT local service. SWBT will also suspend order acceptance at this time.
- E. If any LSP charges remain unpaid or undisputed forty (40) days past the due date, LSP shall, at its sole expense, notify its end users, the Commission and the end user's of Record that their service may be disconnected for LSP failure to pay Unpaid Charges, and that its end users must select a new local service provider within five (5) days. The notice shall also advise the end user that SWBT will assume the end user's account at the end of the five (5) day period should the end user fail to select a new local service provider.
- F. If any LSP charges remain unpaid or undisputed forty-five (45) days past the due date, SWBT shall disconnect LSP and transfer all LSP's end users who have not selected another local service provider directly to SWBT's service. These end users shall receive the same services provided through LSP at the time of transfer. SWBT shall inform the Commission and the end user's IXC(s) of Record of the names of all end users transferred through this process. Applicable service establishment charges for switching end users from LSP to SWBT shall be assessed to LSP.
- G. Within five (5) days of the transfer (50 days past LSP's due date), SWBT shall notify all affected end users that because of an LSP's failure to pay,

their service is now being provided by SWBT. SWBT shall also notify the end user that they have thirty (30) days to select a local service provider.

- H. SWBT may discontinue service to LSP upon failure to pay undisputed charges as provided in this section, and shall have no liability to LSP or LSP end users in the event of such disconnection.
- I. If any end user fails to select a local service provider within thirty (30) days of the change of providers (80 days past LSP's due date), SWBT shall terminate the end user's service. SWBT shall notify the Commission and the end user's IXC of Record of the names of all end users whose service has been terminated. The end user shall be responsible for any and all charges incurred during the selection period.
- J. Nothing herein shall be interpreted to obligate SWBT to continue to provide service to any such end users. Nothing herein shall be interpreted to limit any and all disconnection rights SWBT may have with regard to such end users.
- K. After disconnect procedures have begun, SWBT shall not accept service orders from LSP until all unpaid charges are paid. SWBT shall have the right to require a deposit equal to one month's charges (based on the highest previous month of service from SWBT) prior to resuming service to LSP after disconnect for nonpayment.

XIII. FORCE MAJEURE

Neither party shall be responsible for delays or failures in performance resulting from acts or occurrences beyond the reasonable control of such Party, regardless of whether such delays or failures in performance were foreseen or foreseeable as of the date of this Agreement, including, without limitation: fire, explosion, power failure, cable cuts, acts of God, war, revolution, civil commotion, or acts of public enemies; any law, order, regulation, ordinance or requirement of any government or legal body; or labor unrest, including, without limitation, strikes, slowdowns, picketing or boycotts; or delays caused by the other party or by other service or equipment vendors; or any other circumstances beyond the Party's reasonable control. In such event, the Party affected shall, upon giving prompt notice to the other Party, be excused from such performance on a day-to-day basis to the extent of such interference (and the other Party shall likewise be excused from performance of its obligations on a day-for-day basis to the extent such Party's obligations relate to the performance so interfered with). The affected party shall use its best efforts to avoid or remove the cause of nonperformance and both parties shall proceed to perform with dispatch once the causes are removed or cease.

XIV.

LIMITATION OF LIABILITY

SWBT's liability, if any, for its gross negligence or willful misconduct is not limited by its corresponding tariffs. With respect to any other claim or suit, by a LSP or any others, for damages arising out of mistakes, omissions, interruptions, delays or efforts, or defects in transmission occurring in the course of furnishing service hereunder, SWBT's liability, if any, shall not exceed an amount equivalent to the proportionate charge to the LSP for the period of service during which such mistake, omission, interruption, delay, error, or defect in transmission or service occurs and continues. In no event shall SWBT be responsible for any special, indirect, consequential or exemplary damages. This liability shall be in addition to any amounts that may otherwise be due to the LSP under corresponding tariffs as an allowance for interruptions. However, any such mistakes, omissions, interruptions, delays, errors, or defects in transmission or service which are caused or contributed to by the negligence or willful act of the LSP or which arise from the use of LSP-provided facilities or equipment shall not result in the imposition of any liability whatsoever upon SWBT.

SWBT shall be indemnified and held harmless by the LSP against claims and damages arising from provision of the LSP's services or equipment except those directly associated with the provision of local service to the LSP which is governed by corresponding tariffs.

SWBT shall be indemnified and held harmless from all claims and damages arising from the discontinuance of service for nonpayment to SWBT by the LSP. Notice of discontinuance shall be as specified in the Substantive Rules of the State Commission.

SWBT shall have no liability to the end users of the LSP for claims arising from the provision of the LSP's service to its end users including, but not limited to, claims for interruption of service, quality of service or billing disputes.

When the lines or services of other companies and carriers are used in establishing connections to and/or from points not reached by SWBT's lines, SWBT is not liable for any act or omission of the other companies or carriers.

XV.

NONDISCLOSURE

The Parties to this Agreement anticipate and recognize that they will exchange or come into possession of, data about each other's end users and each other's business as a result of this Agreement which will be designated as confidential by that Party. Each Party agrees (1) to treat all such data as strictly confidential and (2) to use such data only for purposes of performance under this Agreement. Each Party agrees not to disclose data on the other Party's end users or business which has been designated as confidential to any person without first securing the written consent of the other Party. The foregoing shall not apply to information which is in the public domain.

If a court or governmental agency orders or a third party requests a Party to disclose or to provide any data or information covered by this Section, that Party will immediately inform the other Party of the order or request both by telephone and overnighted mail before disclosing the data or information. Notification and consent requirements described above are not applicable in cases where a court order requires the production of toll billing records of an individual residence or business end user customer.

This section will not preclude the disclosure by the Parties of information or material described in this Section to consultants, agents, or attorneys representing the respective Parties or the Office of the Public Counsel for the states of Arkansas, Kansas, Missouri, Oklahoma, and/or Texas, and state regulatory commissions or staffs, or FCC Staff, provided that these third parties are bound by the same or comparable confidentiality requirements as the Parties to this Agreement. The provisions of this Section will remain in effect notwithstanding the termination of this Agreement, unless agreed to in writing by both Parties.

Pursuant to Section 222 of the Act, both Parties agree to limit their use of proprietary information received from the other to the permitted purposes identified in the Act.

XVI. PUBLICITY

The Parties agree not to use in any advertising or sales promotion, press releases or other publicity matters any endorsements, direct or indirect quotes, or pictures implying endorsement by the other Party or any of its employees without such Party's prior written approval. The Parties will submit to each other for written approval, prior to publication, all publicity matters that mention or display one another's name and/or marks or contain language from which a connection to said name and/or marks may be inferred or implied.

XVII. ASSIGNMENT

Neither Party may assign, subcontract, or otherwise transfer its rights or obligations under this Agreement except under such terms and conditions as are mutually acceptable to the other Party and with such Party's prior written consent, which consent shall not be unreasonably withheld. Assignment without consent shall be grounds for immediate termination of this Agreement.

XVIII. DISPUTE RESOLUTION

A. Finality of Disputes

No claims shall be brought for disputes arising from this Agreement more than 24 months from the date of occurrence which gives rise to the dispute. If any portion of an amount due to SWBT under such agreement is subject

to a bona fide dispute between the Parties, LSP shall within fourteen (14) days of its receipt of the invoice containing such disputed amount give notice to SWBT of the amounts it disputes and include in such notice the specific details and reasons for disputing each item. LSP shall pay when due (i) all undisputed amounts to SWBT and (ii) all Disputed Amounts into an interest bearing escrow account with a third party escrow agent mutually agreed upon by the Parties.

B. Alternative to Litigation

The Parties desire to resolve disputes arising out of this Agreement without litigation. Accordingly, except for action seeking a temporary restraining order or an injunction related to the purposes of this Agreement, or suit to compel compliance with this dispute resolution process, the Parties agree to use the following alternative dispute resolution procedure as their sole remedy with respect to any controversy or claim of \$25,000 or less, arising out of or relating to this Agreement or its breach. The procedures hereunder may be used with disputes for \$25,000 or more, if mutually agreeable to the Parties.

1. Resolution of Disputes Between Parties to the Agreement

At the written request of a Party, each Party will appoint a knowledgeable, responsible representative to meet and negotiate in good faith to resolve any dispute arising under this Agreement. The location, form, frequency, duration and conclusion of these discussions shall be left to the discretion of the representatives. Upon agreement, the representatives may utilize other alternative dispute resolution procedures such as mediation to assist in the negotiations. Discussions and correspondence among the representatives for purposes of settlement are exempt from discovery and production and shall not be admissible in the arbitration described below or in any lawsuit without the concurrence of all Parties. Documents identified in or provided with such communications, which are not prepared for purposes of the negotiations, are not so exempted and, if otherwise admissible, may be admitted in evidence in the arbitration or lawsuit.

2. Arbitration

If the negotiations do not resolve the dispute within thirty (30) days of the initial written request, the dispute shall be submitted to binding arbitration by a single arbitrator pursuant to the Commercial Arbitration Rules of the American Arbitration Association. A Party may demand such arbitration in accordance with the procedures set out in those rules. Discovery shall be controlled by the arbitrator and shall be permitted to the extent set

out in this section. Each Party may submit in writing to a Party, and that Party shall so respond, to a maximum of any combination of thirty-five (35) (none of which may have subparts) of the following:

- (a) Interrogatories
- (b) Demands to produce documents
- (c) Requests for admission

Additional discovery may be permitted upon mutual agreement of the Parties. The arbitration hearing shall be commenced within thirty (30) days of the demand for arbitration. The arbitration shall be held in the city where this Agreement was executed by SWBT. The arbitrator shall control the scheduling so as to process the matter expeditiously. The Parties shall submit written briefs five days before the hearing. The arbitrator shall rule on the dispute by issuing a written opinion within twenty (20) days after the close of hearings. The arbitrator has no authority to order punitive or consequential damages. The times specified in this section may be extended upon mutual agreement of the Parties or by the arbitrator upon a showing of good cause. Judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction.

3. Costs

Each Party shall bear its own costs of these procedures. A Party seeking discovery shall reimburse the responding Party the costs of production of documents (including search time and reproduction costs). The Parties shall equally split the fees of the arbitration and the arbitrator.

XIX. VERIFICATION REVIEWS

Each Party to this Agreement will be responsible for the accuracy and quality of its data as submitted to the respective Parties involved. Upon reasonable written notice, each Party or its authorized representative (providing such authorized representative does not have a conflict of interest related to other matters before one of the Parties) shall have the right to conduct a review and verification of the other Party to give assurances of compliance with the provisions of this Agreement. This includes on-site verification reviews at the other Party's or the Party's vendor locations.

After the initial year of this Agreement verification reviews will normally be conducted on an annual basis with provision for staged reviews, as mutually agreed, so that all subject matters are not required to be reviewed at the same time. Follow up reviews will be permitted between annual reviews where significant deviations are found. During the initial year of the Agreement more frequent